

account, to the extent of the errors specified in his bill, independently of the question of fraud, actual or constructive.

The court is to take the account, as stated, and the *onus probandi* is upon the party having liberty to surcharge and falsify ; and he will be restricted to proof of errors specified in his bill.

When the accounts upon which the settlement was based, were presented to the complainant, he was deprived of much of his mental capacity, and incapable of giving them that examination which was indispensable to their full comprehension. **HELD—**

That under these circumstances, it was the duty of the court, if errors were pointed out, to permit the plaintiff to surcharge and falsify the accounts, though the settlement based upon them was regarded as a family settlement, which the court will usually uphold with a strong hand.

A party having elected to examine witnesses upon their *voir dire*, is precluded from resorting to any other mode to show their interest in the event of the suit.

An appeal and a bond to prosecute the appeal, will not, under the act of 1845, ch. 367, independently of the direction of the court, delay the execution of the order appealed from.

Whether such direction shall or shall not be given, is referred by the legislature to the sound discretion of the court, upon a view of all the circumstances of the case.

[The facts of this case are fully stated in the Chancellor's opinion:]

THE CHANCELLOR:

This cause, which has been argued with an ability every way worthy the eminent counsel engaged in it, has received the most deliberate consideration of the court. It is justly regarded as one of much importance, not only with reference to the influence which the decision may have upon the pecuniary interests of the parties ; but on account of the questions which have been discussed so elaborately, and, which derive additional importance from the relations which the parties really concerned in the controversy bear to each other.

It appears from the pleadings and proofs, that by an act passed by the legislature of this state, at December session, 1821, ch. 201, the defendant was incorporated by the name of the Savage Manufacturing Company, for the purpose of manufacturing and vending of cotton goods, and the carrying on of any other branches of manufacture in their discretion ; for which